



CITY OF
HAYWARD
HEART OF THE BAY

**Simulated Gambling Device Ordinance
and
Text Amendment to Zoning Ordinance
HMC Section 10-1.3500**

*Presented by: City Attorney's Office, Development Services
Department, Police Department*





Simulated Gambling Device Ordinance and Zoning Ordinance Text Amendment

Introduction

- Tonight, staff recommends that the Council introduces two ordinances:
 1. An ordinance amending the Hayward Municipal Code by adding Article 16 to Chapter 4 relating to Simulated Gambling Devices; and
 2. An ordinance revising the Definitions Section of the Hayward Zoning Ordinance (Section 10-1.3500).





Simulated Gambling Device Ordinance and Zoning Ordinance Text Amendment

Simulated Gambling Device Ordinance: Background

- From late 2012 through May 2013 four businesses that described themselves as “business centers” began operation in Hayward.
 - Worldnet Business Center, LLC, 22620 Vermont St (closed);
 - Net Connection Hayward, LLC, 778 B Street;
 - I Biz, LLC, 22466 Maple Court
 - Chances Are, LLC, 22632 Main Street.





Simulated Gambling Device Ordinance: Background

- These business centers/internet cafes generally provide:
 - Sale of internet time for use on in-house computers;
 - Copy and fax services;
 - Sale of small pre-packaged food items;
 - Sale of miscellaneous office supplies.





Simulated Gambling Device Ordinance and Zoning Ordinance Text Amendment

Simulated Gambling Device Ordinance: Background

- Sale of internet time is promoted by offering entries into a sweepstakes.
- Based on the amount of computer time purchased, customers are provided a corresponding number of credits to play sweepstakes games on the computers.
- The games feature graphics and game-play similar to those found in casinos.
- Customers can win cash prizes, in some cases up to \$3000.





Simulated Gambling Device Ordinance: Background

- Subsequent to opening of these businesses City staff began receiving inquiries and complaints related to the businesses including:
 - Parking problems, loitering, noise complaints and smoking complaints.
- City also received an advisory bulletin from the California Department of Justice Bureau of Gambling Control wherein DOJ took the position that such businesses were engaged in gambling in violation of state law.





Simulated Gambling Device Ordinance and Zoning Ordinance Text Amendment

Simulated Gambling Device Ordinance: Background

- On February 19, 2013, the City Council enacted an interim urgency ordinance establishing a temporary 45-day moratorium on the development, establishment, and operation of Computer Gaming and Internet Access Businesses in the City of Hayward.
- Council extended the moratorium on April 2, 2013 and it was to remain in force until no later than February 18, 2014.





Simulated Gambling Device Ordinance and Zoning Ordinance Text Amendment

Simulated Gambling Device Ordinance: Background

- Civil litigation resulting from enactment of temporary moratorium:
 - *Net Connection Hayward, LLC v. City of Hayward* U.S. District Court Case No. 13-1212;
 - *IBiz, LLC v. City of Hayward*, U.S. District Court Case No. 13-1537.
 - *City of Hayward v. Chances Are, LLC et. al.* Alameda County Superior Court Case No. RG 13681065
 - *Chances Are, LLC v. City of Hayward*, U.S. District Court Case No. 13-2383
- Businesses sought to enjoin enforcement of the moratorium by alleging that it violated Due Process, Equal Protection, and the First Amendment.





Simulated Gambling Device Ordinance: Background

- U.S. District Court ruled that moratorium did not violate Due Process or Equal Protection.
- However, the Court concluded that the moratorium was too broad and violated the First Amendment because it essentially prohibited any business from providing access to computers and electronic devices to customers for any purpose.
- As an alternative, the Court stated that the City could have specifically prohibited the exact type of conduct it was concerned about, computer gaming and Internet access businesses that provide sweepstakes games.





Simulated Gambling Device Ordinance and Zoning Ordinance Text Amendment

Simulated Gambling Device Ordinance:

- In response to the Court's Order staff presents the Simulated Gambling Device Ordinance for consideration.
- The Ordinance is based on a similar ordinance enacted by Seminole County, Florida in 2011.
- A federal court in Florida upheld the Seminole County Ordinance against a First Amendment overbreadth challenge similar to the one raised in the *I Biz* case. The decision was subsequently upheld by the U.S. Court of Appeals for the 11th Circuit.





Simulated Gambling Device Ordinance and Zoning Ordinance Text Amendment

Simulated Gambling Device Ordinance: Summary

- Prohibits any person from managing, supervising, maintaining, providing, producing, possessing or using one or multiple simulated gambling devices.
- Simulated Gambling Device is defined as any device that, upon connection with an object, is available to play or operate a computer simulation of any game, where the play or operation of the device may deliver or entitle the person or persons playing or operating the device to a payoff directly or indirectly from the owner or operator of the device or that person's designee.





Simulated Gambling Device Ordinance and Zoning Ordinance Text Amendment

Simulated Gambling Device Ordinance: Summary

- Violation is a misdemeanor punishable by imprisonment in County Jail for a up to six (6) months or a fine of up to \$1000 or both.
- Violation is a public nuisance which may be enjoined by civil action or abated pursuant to the procedures provided in the Hayward Municipal Code for abatement of nuisances.





Simulated Gambling Device Ordinance and Zoning Ordinance Text Amendment

Simulated Gambling Device Ordinance: Application

- The Ordinance is intended to apply retroactively irrespective of the prior issuance of a business license by the City.
- The Ordinance is not intended to conflict with State law regarding gambling, slot machines, gambling devices or lotteries.





Simulated Gambling Device Ordinance and Zoning Ordinance Text Amendment

Simulated Gambling Device Ordinance: Application

- The Ordinance will not prohibit games found at businesses such as Chuck E. Cheese to the extent that such games qualify as “amusement devices” allowed by State Law.
- The Ordinance will not prohibit businesses from offering games such as “World of Warcraft” or similar games that can be played on networked computers or gaming consoles.





Simulated Gambling Device Ordinance and Zoning Ordinance Text Amendment

Simulated Gambling Device Ordinance:

- The City continues to receive inquiries regarding business license applications for businesses that appear to fit the internet café/business center model that features promotional sweepstakes games.





Simulated Gambling Device Ordinance and Zoning Ordinance Text Amendment

Simulated Gambling Device Ordinance: Continuing Public Safety and Welfare Issues

- Conditions prompting complaints by community members prior to enactment of the moratorium persist to the present.
- Community members gave testimony during November 7, 2013 Planning Commission Meeting regarding negative impact on downtown life related to internet cafés/business centers.





Simulated Gambling Device Ordinance and Zoning Ordinance Text Amendment

Simulated Gambling Device Ordinance: Continuing Public Safety and Welfare Issues

- Since October 2013 HPD officers have conducted arrests for offenses such as auto theft, narcotics possession, assault with a deadly weapon and possession of stolen property in the immediate areas of the internet cafes/business centers.
- Additionally, deputies from the Alameda County Sheriff's Department and agents with the California Department of Corrections and Rehabilitation arrested several individuals at one of the business locations during a parole sweep.





Zoning Ordinance Text Amendment HMC Section 10-1.3500

- Staff recommends amending the definitions of the following uses to allow “internet access usage”:
 - Commercial Amusement Facility;
 - Copy or Reproduction Service;
 - Mailing or Facsimile Service;
 - Office; and
 - Recreational Facility
- Simulated gambling devices will be prohibited at these uses pursuant to the proposed Simulated Gambling Device Ordinance.





Simulated Gambling Device Ordinance and Zoning Ordinance Text Amendment

Questions and Comments

